APPENDIX.

UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, *Petitioner,* *vs.* MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Respondent.*	Civil No. 70 C 317(2)

PETITION FOR INJUNCTION UNDER SECTION 10(l) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED.

To the Honorable, the Judges of the United States District Court for the Eastern District of Missouri, Eastern Division:

Comes now Joseph H. Solien, Regional Director of the Fourteenth Region of the National Labor Relations Board (herein called the Board), and petitions this Court for and on behalf of the Board, pursuant to Section 10(l) of the

National Labor Relations Act, as amended, (61 Stat. 149; 73 Stat. 544; 29 U. S. C. Sec. 160(l); herein called the Act), for appropriate injunctive relief pending the final disposition of the matters involved herein pending before the Board on a charge alleging that Respondent has engaged in, and is engaging in, acts and conduct in violation of Section 8(b)(4)(i)(ii)(B) of the Act. In support thereof, petitioner respectfully shows as follows:

1. Petitioner is Regional Director of the Fourteenth Region of the Board, an agency of the United States and files this petition for and on behalf of the Board.

2. Jurisdiction of this Court is invoked pursuant to Section 10(l) of the Act.

3(a). On or about June 10, 1970, Sears, Roebuck and Co., (hereinafter called Sears) pursuant to the provisions of the Act, filed a charge with the Board alleging that Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, a labor organization (hereinafter called Respondent), has been and is engaging in, unfair labor practices within the meaning of Section 8(b)(4)(i)(ii)(B) of the Act. An amended charge was filed on June 23, 1970. Copies of said charges are attached hereto as Exhibits 1 and 2, respectively, and made a part hereof.

(b) On or about June 12, 1970, Terminal Freight Cooperative Association (hereinafter called the Association), Terminal Freight Handling Company (hereinafter called Handling Company), and May Department Stores Company (hereinafter called May), pursuant to the provisions of the Act, filed a charge with the Board alleging that Respondent has been and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(i)(ii)(B) of

the Act. A copy of said charge is attached hereto as Exhibit 3 and made a part hereof.

4. The aforesaid charges were referred to Joseph H. Solien as Regional Director of the Fourteenth Region of the Board.

5. Upon the basis of the following, petitioner has reasonable cause to believe that said charges are true and that complaints of the Board based on said charges should issue against Respondent pursuant to Section 10(b) of the Act. More particularly, petitioner has reasonable cause to believe, and believes, that Respondent is a labor organization within the meaning of Sections 2(5), 8(b) and 10(l) of the Act, and that said Respondent has been and is engaging in, acts and conduct in violation of Section 8(b)(4)(i)(ii)(B) of the Act, affecting commerce within the meaning of Section 2(6) and (7) of the Act, as follows:

(a) Respondent, an unincorporated association, is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(b) Respondent maintains its principal office at 300 South Grand Boulevard, St. Louis, Missouri, and, at all times material herein, has been and is engaged within this judicial district in transacting business and in promoting and protecting the interests of its employee members.

(c) Sears is a corporation with an office and places of business in various states of the United States including the States of Missouri and Illinois, where it is engaged in the business of retail sales of clothing, furniture, tools, electrical appliances, sporting goods and other merchandise. In the operation of its business Sears annually receives goods and merchandise in Missouri, directly from points outside the State of Missouri, valued in excess of

$50,000, and annually receives goods and merchandise in Illinois, from points outside the State of Illinois, valued in excess of $50,000. Sears annually sells merchandise valued in excess of $500,000.

(d) Be-Rite Delivery Service, Inc., (herein called Be-Rite) is a corporation having offices and places of business at 1911 Locust and 1024 South Vandeventer in the City of St Louis, and at 8950 Pershall, Hazelwood, all in the State of Missouri. Be-Rite is engaged in business as a delivery service, delivering goods, wares and merchandise for Sears and other persons in the Metropolitan Area of the City of St. Louis. In the course and conduct of its business operations, Be-Rite annually performs delivery services for Sears valued in excess of $50,000.

(e) Association is a non-profit shipper association consisting of 46 companies, including May, Boeing Company, Broadway-Hale Stores, North American Rockwell Corporation, Whirlpool Company, General Dynamics Corporation and Sears, which receives less-than-carload and less-than-truckload shipments, consolidates such shipments into carload lots and reships such goods to members' places of business at various locations throughout the United States. Members of the Association, individually and collectively, have annual gross sales in excess of $500,000, and each receives and ships goods valued at in excess of $50,000, in interstate commerce throughout the several states of the United States.

(f) Handling Co. is a non-profit Delaware corporation engaged in the handling, consolidation and trans-shipment of freight as manager of the Association. It operates 36 terminal facilities in 24 states and the District of Columbia, including a terminal at 924 Cerre Street, in St. Louis, Missouri. It has annual receipts of more than $1 million derived from services supplied in connection with the movement of freight in interstate commerce.

(g) May is a retail department store enterprise. In the operation of its retail business May annually sells goods, wares and merchandise valued in excess of $1 million and in the same period purchases from suppliers located in states other than the State of Missouri, goods, wares and merchandise valued in excess of $50,000, which were transported from said other states directly to May's facilities in the State of Missouri.

(h) At no time material herein has Respondent Union had any labor dispute with Sears, the Association, Handling Co. or May.

(i) At all times material herein Respondent Union has had a labor dispute with Be-Rite concerning the wages, hours, terms and conditions of employment of Be-Rite's employees.

(j) Since on or about June 9, 1970, Respondent in furtherance of its dispute with Be-Rite referred to in subparagraph (i) above, has picketed at stores of Sears located at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 490 Northwest Plaza, 7412 Manchester Avenue, at Sears' warehouses at 8950 Pershall or 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis, in the State of Missouri, and at Sears' stores at 1001 State Street in East St. Louis, Illinois, and at 409 Piasa in Alton, Illinois.

(k) Commencing on or about June 10, 1970, Respondent, in furtherance of its dispute with Be-Rite, picketed Association, Handling Co. and Sears in the vicinity of 924 Cerre Street, St. Louis, Missouri.

(l) As a result of Respondent's acts and conduct referred to in subparagraph (j) above, employees of Sears and employees of other persons in commerce or an industry affecting commerce, ceased working during the period such picketing was conducted and have refused to perform services for their respective employers.

(m) As a result of Respondent's acts and conduct referred to in subparagraph (k) above, employees of Association, Handling Co., May and other persons in commerce or in an industry affecting commerce ceased working during the time such picketing was conducted and have refused to perform services for their respective employers.

(n) By the acts and conduct set forth in subparagraphs (j) and (k) above, Respondent has engaged in and has induced and encouraged individuals employed by Sears, the Association, the Handling Co. and May and other persons engaged in commerce or in an industry affecting commerce to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport or otherwise handle or work on goods, articles, materials or commodities or to perform services and has threatened, coerced and restrained Sears, the Association, the Handling Co. and May and other persons engaged in commerce or in industries affecting commerce.

(o) Objects of the Acts and conduct of the Respondent set forth in subparagraphs (j) and (k) above were, and are: (1) to force or require the Association, the Handling Co., and other persons engaged in commerce or in an industry affecting commerce, to cease doing business with Sears; and (2) to force and require Sears to cease doing business with Be-Rite.

6. It may fairly be anticipated that, unless enjoined, Respondent will continue or repeat the acts and conduct set forth in paragraph 5, subparagraphs (j) and (k), above, or similar or like acts and conduct in violation of Section 8(b)(4)(i)(ii)(B) of the Act. It is therefore essential, appropriate, just and proper, for the purpose of effectuating the policies of the Act, and in accordance with the provisions of Section 19(l) thereof, that, pending final disposition of the matters involved herein pending before

the Board, Respondent be enjoined and restrained from the commission of the acts and conduct above alleged, similar acts and conduct, or repetitions thereof.

WHEREFORE, petitioner prays:

1. That the Court issue an order directing Respondent to appear before this Court, at a time and place fixed by the Court, and show cause, if any there be, why an injunction should not issue enjoining and restraining Respondent, its officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with them, pending the final disposition of the matters involved herein pending before the Board, from:

(a) picketing at or in the vicinity of Sears' retail stores at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 490 Northwest Plaza, 7412 Manchester Avenue, or at Sears, warehouses at 895 Pershall or 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis, in the State of Missouri, or at Sears' stores at 1001 State Street in East St. Louis, Illinois, and 309 Piasa in Alton, Illinois.

(b) picketing at or in the vicinity of the premises known and numbered as 924 Cerre Street in the City of St. Louis and State of Missouri.

(c) in any manner or by any means including picketing, orders, directions, instructions, requests or appeals, however given, made or imparted or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engaging in, or inducing or encouraging any individual employed by Sears, the Association, Handling Co. and May or by any other person engaged in commerce or in an industry affecting commerce to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work

on any goods, articles, materials or commodities or to perform any service, or in any manner or by any means threatening, coercing or restraining Sears, the Association, Handling Co. and May or any other person engaged in commerce or an industry affecting commerce where in either case an object thereof is to force or require Sears, the Association, Handling Co. and May or any other person to cease using, selling, handling, transporting or otherwise dealing in the products of or to cease doing business with Be-Rite.

2. That upon return of said Order to Show Cause, the Court issue an Order enjoining and restraining Respondent in the manner set forth above.

3. That the Court grant such further and other relief as may be just and proper in the premises.

Dated at Saint Louis, Missouri, this 29th day of June 1970.

/s/ JOSEPH H. SOLIEN
Joseph H. Solien, Regional Director
National Labor Relations Board
Fourteenth Region

ARNOLD ORDMAN,
General Counsel

DOMINICK L. MANOLI,
Associate General Counsel,

JULIUS G. SEROT,
Assistant General Counsel,

GERALD P. FLEISCHUT,
Regional Attorney,

/s/ JOHN S. STEVENS
John S. Stevens, Attorney
National Labor Relations Board
1040 Boatmen's Bank Building
314 North Broadway
St. Louis, Missouri 63102
MAin 2-4154

EXHIBIT 1.

FORM NLRB-501 (10-68)

Form Approved
Budget Bureau No. 64-R010.11

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 14-CC-603

Date Filed June 10, 1970

1. a. Name: Miscellaneous Drivers and Helpers Union, Local No. 610, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of

b. Union Representative to Contact: William Kneist, Business Representative

c. Phone No.: 389-2575

d. Address (Street, city, State and ZIP code): 300 South Grand Boulevard, St. Louis, Missouri 63103

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (4)(i)(B) (4)(ii)(B) (5) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above-named labor organization, by its officers, agents and representatives, since on or about June 9, 1970, and continuing to date, has induced or encouraged individuals employed by persons engaged in commerce or in an industry affecting commerce to refuse in the course of their employment to transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, and has threatened, coerced or restrained persons engaged in commerce or in an industry affecting commerce where in either case an object thereof is to force or require Sears, Roebuck and Co., at the locations listed on the attachment, to cease using the services of Ba-Rite Delivery Service, Inc., or to cease doing business with Ba-Rite Delivery Service, Inc.

3. Name of Employer: Ba-Rite Delivery Service, Inc. Office phone: 621-9522

4. Location of Plant Involved (Street, city, State and ZIP code): 1911 Locust, St. Louis, Missouri 63103; 1024 South Vandeventer, St. Louis, Missouri 63110; 8950 Pershall, Hazelwood, Missouri

5. Type of Establishment (Factory, mine, wholesaler, etc.): local delivery company

6. Identify Principal Product or Service: transportation of goods

7. No. of Workers Employed: 160

8. Full Name of Party Filing Charge: Sears, Roebuck and Co.

9. Address of Party Filing Charge (Street, city, State and ZIP code): 490 Northwest Plaza, St. Ann, Missouri

10. Telephone No.: main office AX 1-1000

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By: [signature] (Signature of representative or person making charge)

Attorney (Title or office, if any)

Address: Chicago Title and Trust Building, 111 West Washington Street, Chicago, Illinois 60602

312-641-0200 (Telephone number)

June 10, 1970 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

KJB/jf

Miscellaneous Drivers and Helpers Union,
Local No. 610, a/w International Brotherhood
of Teamsters, Chauffeurs, Warehousemen and
Helpers of America
(De-Rite Delivery Service, Inc.)
Case No. 14-CC-603

June 10, 1970

Attachment

Locations of Sears, Roebuck and Co. involved:

1408 North Kingshighway, St. Louis, Missouri 63113

3708 South Grand Boulevard, St. Louis, Missouri 63118

15 Crestwood Plaza, Crestwood, Missouri

490 Northwest Plaza, St. Ann, Missouri

1001 State Street, East St. Louis, Illinois

7412 Manchester, Maplewood, Missouri 63143

1024 South Vandeventer, St. Louis, Missouri 63110

8950 Pershall, Hazelwood, Missouri

309 Piasa, Alton, Illinois

EXHIBIT 2.

FORM NLRB-501 (12-69)

Form Approved Budget Bureau No. 64-R003.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

AMENDED CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 14-CC-603

Date Filed June 23, 1970

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name: Local No. 610, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

b. Union Representative to Contact: William White, Business Representative

c. Phone No.: 289-2525

d. Address (Street, city, State and ZIP code): 300 South Grand Boulevard, St. Louis, Missouri 63103

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of Section 8(b), subsection(s) (4) (i) (ii) (B) (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above-named labor organization, by its officers, agents and representatives, since on or about June 9, 1970, and continuing to date, has induced or encouraged individuals employed by persons engaged in commerce or in an industry affecting commerce to refuse in the course of their employment to transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, and has threatened, coerced or restrained persons engaged in commerce or in an industry affecting commerce where in either case an object thereof is to force or require Sears, Roebuck and Co., at the locations listed on the attachment, to cease using the services of Be-Rite Delivery Service, Inc., or to cease doing business with Be-Rite Delivery Service, Inc.

Since on or about June 19, 1970, the above-named labor organization, by its officers agents and representatives, has induced and encouraged individuals employed by Dependable Service Co. and Action Service Co., persons engaged in commerce or in an industry affecting commerce, to refuse in the course of their employment to perform work and to work on goods, articles and commodities, and has threatened, coerced and restrained persons engaged in commerce or in an industry affecting commerce where an object of all of this activity is to force or require Sears, Roebuck and Co. to cease using the services of Be-Rite Delivery Service, Inc., or to cease doing business with Be-Rite Delivery Service, Inc.

3. Name of Employer: Be-Rite Delivery Service, Inc. — Office phone: 621-9522

4. Location of Plant Involved (Street, city, State and ZIP code): 1911 Locust, St. Louis, Missouri 63103; 8630 Pershall, Hazelwood, Missouri; 1024 South Vandeventer, St. Louis, Missouri 63110

5. Type of Establishment (Factory, mine, wholesaler, etc.): local delivery company

6. Identify Principal Product or Service: transportation of goods

7. No. of Workers Employed: 160

8. Full Name of Party Filing Charge: Sears, Roebuck and Co.

9. Address of Party Filing Charge (Street, city, State and ZIP code): 490 Northwest Plaza, St. Ann, Missouri

10. Telephone No. with Offic: AX 1-1000

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ D. J. Sullivan (Signature of representative or person making charge) — Attorney (Title or office, if any)

D. J. Sullivan
Address 1555 Railway Exchange Bldg. — CE 1-5333 (Telephone number) — June 23, 1970 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

JGS

GPO 885-455

Miscellaneous Drivers and Helpers Union,
Local No. 610, a/w International Brotherhood
of Teamsters, Chauffeurs, Warehousemen and
Helpers of America
(De-Rite Delivery Service, Inc.)
Case No. 14-CC-503

June 23, 1970

Attachment

Locations of Sears, Roebuck and Co. involved:

1408 North Kingshighway, St. Louis, Missouri 63113

3708 South Grand Boulevard, St. Louis, Missouri 63118

15 Crestwood Plaza, Crestwood, Missouri

490 Northwest Plaza, St. Ann, Missouri

1001 State Street, East St. Louis, Illinois

7412 Manchester, Maplewood, Missouri 63143

1024 South Vandeventer, St. Louis, Missouri 63110

8950 Pershall, Hazelwood, Missouri

309 Piasa, Alton, Illinois

EXHIBIT 3.

FORM NLRB-508 (12-68)

Form Approved
Budget Bureau No. 64-R003.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 14-CC-[illegible]

Date Filed 6-12-70

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name	b. Union Representative to Contact	c. Phone No.
Miscellaneous Drivers and Helpers Union, Local No. 610, a/w I.B. of T.C.W. & H. of A.	Wm. Kneist, Bus. Rep.	289-2559

d. Address (Street, city, State and ZIP code)
300 So. Grand Blvd., St. Louis, Missouri 63103

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) [illegible] (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

See Attachment A.

3. Name of Employer Terminal Freight Cooperative Association
Terminal Freight Handling Co.

4. Location of Plant Involved (Street, city, State and ZIP code)
924 Cerre St. St. Louis, Missouri

5. Type of Establishment (Factory, mine, wholesaler, etc.)	6. Identify Principal Product or Service	7. No. of Workers Employed
Warehouse	General Merchandise	5

8. Full Name of Party Filing Charge 1. Terminal Freight Cooperative Association and Terminal Freight Handling Company. 2. May Department Stores Co.

9. Address of Party Filing Charge (Street, city, State and ZIP code)
1. 924 Cerre St. St. Louis, Missouri 63102
2. 6th and Clive Sts. St. Louis, Missouri 63101.

10. Telephone No. GE 1-3151

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Jerry Kronenberg (Signature of representative or person making charge) Atty. (Title or office, if any)

Address 111 W. Washington Street, Chicago, Illinois 60602 (Telephone number) 312-236-8987 6/12/70 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 865-460

Attachment A.

The above named labor organization and its agents, beginning on June 10, 1970, and continuing to the present, (i) have engaged in, induced and encouraged individuals employed by Terminal Freight Cooperative Association, Terminal Freight Handling Co., and Pine Transportation Co., persons engaged in commerce and in industries affecting commerce, and other persons so engaged, to engage in a strike or a refusal in the course of their employment to use, process, transport or otherwise handle or work on any goods, articles, materials or commodities shipped to or intended to be shipped to or received by or intended to be received by Famous Barr Stores (a division of May Department Stores Co.), Boyd's Stores, American Biltrite Rubber Co., Venture Stores, Broadway-Hale Stores, City Products, Continental Can, Stix, Baer and Fuller, Van Waters and Rogers, Inc., and Rohr Corp., all members of Terminal Freight Cooperative Association and other members of said Association, or to perform any services for such members; and (ii) have since June 10, 1970, and continuing to the present, threatened coerced and restrained persons, including those named in (i) above, all of whom are persons engaged in commerce or in industries affecting commerce, with the object of forcing or requiring Terminal Freight Handling Co. and Pine Transportation Co. to cease using, handling, transporting or otherwise dealing in the products of Sears, Roebuck and Co. and of other producers, processors or manufacturers, including the persons named in (i) above, and to cease doing business with Sears, Roebuck and Co. and such other persons.

STATE OF MISSOURI
COUNTY OF ST. LOUIS } ss.

I, Joseph H. Solien, being first duly sworn depose and say that I am Regional Director of the Fourteenth Region of the National Labor Relations Board; that I have read the foregoing petition and exhibit and know the contents thereof; that the statements therein made as upon personal knowledge are true and those made as upon information and belief I believe to be true.

/s/ JOSEPH H. SOLIEN
Joseph H. Solien

Subscribed and sworn to before me this ..... day of .....

/s/ PAULA A. IACONA
Notary Public.

(SEAL)

My commission expires: October 31, 1973.

UNITED STATES DISTRICT COURT
Eastern District of Missouri

JOSEPH H. SOLIEN, ETC., *vs.* MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ETC.	70 C 317(2)

June 30, 1970

MEMORANDUM FOR CLERK.

ENTRY OF APPEARANCE.

Pursuant to Section 10(l) of the National Labor Relations Act, as amended, Sears, Roebuck and Co., the charging party in Case No. 14-CC-603 pending before the National Labor Relations Board, the underlying charge out of which this suit arises, enters its appearance as a party in this suit, by its attorneys.

LEWIS, RICE, TUCKER, ALLEN & CHUBB
By: D. J. SULLIVAN
1555 Railway Exchange Building
611 Olive Street
St. Louis, Missouri 63101
231-5833

MEMORANDUM FOR CLERK.

LEDERER, FOX AND GROVE
111 W. Washington Street
Suite 1837
Chicago, Illinois 60602
312-641-0200

GERARD C. SMETANA, ESQ.
925 Homan Avenue
Chicago, Illinois 60607
312-265-5352

UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Respondent.

} Civil No. 70 C 317(2)

MOTION OF SEARS, ROEBUCK AND CO. TO ACCEPT ITS ENTRY OF APPEARANCE OR, IN ALTERNATIVE, TO INTERVENE.

Sears, Roebuck and Co. ("Sears") respectfully moves that its Entry of Appearance as a party in this suit, which was filed with the Clerk of this Honorable Court on June 30, 1970, be accepted, by virtue of the provisions of Section 10(l) of the National Labor Relations Act, as amended; and that Sears' status as a party to this suit be recognized by the Court. As grounds for this Motion, movant states the following:

(1) This is a suit arising out of unfair practice charges pending before the National Labor Relations Board (NLRB Case No. 14-CC-603);

(2) Sears is the charging party in the underlying proceedings before the Labor Board; and

(3) Under Section 10(l) of the National Labor Relations Act, Sears, as charging party in the administrative proceedings, is entitled to party status in this suit.

In the alternative, Sears respectfully moves, pursuant to Rule 24(e) of the Federal Rules of Civil Procedure, to intervene as of right as a party to this suit, upon the ground that a statute of the United States, namely Section 10(l) of the National Labor Relations Act, as amended, confers an unconditional right on Sears to intervene as a party herein.

Sears requests that the Court consider in connection with this Motion, its Memorandum in Support of Motion simultaneously filed herewith.

LEWIS, RICE, TUCKER, ALLEN & CHUBB
By D. J. SULLIVAN
1555 Railway Exchange Building
611 Olive Street
St. Louis, Missouri 63101
231-5833
Attorneys for Sears, Roebuck and Co.

UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Respondent.

} Civil No. 70 C 317(2)

MOTION TO APPEAR AND PARTICIPATE AS FULL PARTIES LITIGANT.

Come now, Terminal Freight Handling Company, hereinafter referred to as Terminal Freight, and Terminal Freight Cooperative Association, hereinafter referred to as Terminal Association, by their attorneys, who respectfully move that this Court permit the movants herein to appear in the above entitled cause and fully participate as parties and in support of this Motion, state as follows:

1. Terminal Freight is a Delaware corporation, author-

ized to do business in the State of Missouri, with its place of business located at 924 Cerre Street, St. Louis, Missouri.

2. Terminal Association is a not for profit association, authorized to do business in the State of Missouri, with its place of business also located at 924 Cerre Street, St. Louis, Missouri.

3. The unlawful acts of picketing by the Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the "union," have been and are violative of the National Labor Relations Act, 29 U. S. C. Section 151, et seq. and are directed at the terminal and place of business of Terminal Freight and Terminal Association located at 924 Cerre Street, St. Louis, Missouri.

4. The Regional Director of the Fourteenth Region of the National Labor Relations Board has brought the above entitled action pursuant to the National Labor Relations Act, 29 U. S. C. Section 160(l) because he has investigated a charge that the union has engaged in an unfair labor practice and has reasonable cause to believe that said charge is true.

5. The National Labor Relations Act, 29 U. S. C. Section 160(l) authorizes this Court to grant such injunctive relief or temporary restraining order as it deems just and proper, and also confers upon the charging party, here Terminal Freight and Terminal Association, the right to appear by counsel and present relevant evidence.

6. The unlawful picketing of the union has substantially interfered with the operations of Terminal Freight and Terminal Association.

7. That Terminal Freight and Terminal Association are vitally concerned with securing injunctive relief to prohibit any and all unlawful picketing at their place of business.

8. That it is necessary for Terminal Freight and Terminal Association to participate in the above entitled action as full parties litigant as authorized by the National Labor Relations Act. See also *Retail Clerks Union, Local 137 et al.* v. *Food Employers' Council, Inc.*, 351 P. 2d 525 (9th Cir. 1965).

9. That in the event Terminal Freight and Terminal Association are not permitted to participate as full parties litigant, their ability to protect their interest from unlawful picketing may be impaired or impeded. See *e.g. Sears, Roebuck and Company* v. *Carpet, Linoleum, Soft Tile and Resilient Floor Covering Layers, Local Union No. 419,* 410 F. 2d 1148 (10th Cir. 1969, judgment vacated and complaint dismissed as moot U. S. ..... S. Ct., No. 419 (Apr. 27, 1970) also reported at 74 LRRM 2001).

WHEREFORE, Terminal Freight and Terminal Association respectfully pray that this Court permit them to enter, appear and participate as full parties litigant in the above entitled action.

Attorneys for Plaintiffs

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By: /s/ LAWRENCE D. EHRLICH
By /s/ JERRY KRONENBERG
Jerry Kronenberg
By .....
Gerald Tockman

(Dated: July 1, 1970)

UNITED STATES OF AMERICA
Before the National Labor Relations Board
Fourteenth Region

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, (Be-Rite Delivery Service, Inc.) and SEARS, ROEBUCK AND CO.,	Case No. 14-CC-603
MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and TERMINAL FREIGHT COOPERATIVE ASSOCIATION AND TERMINAL FREIGHT HANDLING COMPANY AND MAY DEPARTMENT STORES, INC.	Case No. 14-CC-604

ORDER CONSOLIDATING CASES, COMPLAINT AND NOTICE OF HEARING.

It having been charged in Case No. 14-CC-603 by Sears, Roebuck and Co., herein sometimes called Sears, that Miscellaneous Drivers and Helpers Union, Local No. 610, affili-

ated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein sometimes called Respondent, and in Case No. 14-CC-604 by Terminal Freight Cooperative Association and Terminal Freight Handling Company and May Department Stores, Inc., that Respondent has engaged in, and is engaging in, unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U. S. C., Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director for the Fourteenth Region, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

HEREBY ORDERS, pursuant to Section 102.33 of the Board's Rules and Regulations—Series 8, as amended, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated, the General Counsel of the Board, on behalf of the Board, by the undersigned Regional Director, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations—Series 8, as amended, hereby issues this consolidated complaint and notice of hearing and alleges as follows:

1.

The original charge in Case No. 14-CC-603 was filed by Sears on June 10, 1970, and served by registered mail upon Respondent on or about the same date.

The original charge in Case No. 14-CC-604 was filed by Terminal Freight Cooperative Association and Terminal Freight Handling Company and May Department Stores, Inc., on June 12, 1970, and served by registered mail upon Respondent on or about the same date.

The first amended charge in Case No. 14-CC-603 was filed by Sears on June 23, 1970, and served by registered mail upon Respondent on or about the same date.

2.

A. Be-Rite Delivery Service, Inc., hereinafter called Be-Rite, is and has been at all times material herein, a corporation duly authorized to do business in the State of Missouri.

B. At all times material herein, Be-Rite has maintained offices and places of business at 8950 Pershall Road, 1911 Locust and 1024 South Vandeventer in the Metropolitan Area of the City of St. Louis and State of Missouri. Be-Rite is, and has been at all times material herein, engaged in the transportation and distribution of goods, wares and merchandise for Sears.

C. During the year ending June 1, 1970, which period is representative of its operations during all times material herein, Be-Rite, in the course and conduct of its business operations, furnished services to Sears valued in excess of $50,000.

3.

A. Sears is, and has been at all times material herein, a corporation duly authorized to do business in the States of Missouri and Illinois.

B. At all times material herein, Sears has maintained its places of business at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 409 Northwest Plaza, 7412 Manchester, 8950 Pershall and 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis and in the State of Missouri. Sears also maintains places of business at 1001 State Street in the City of East St. Louis, Illinois, and 309 Piasa in the City of Alton, Illinois. Sears

is, and has been at all times material herein, engaged in the sale and distribution of clothing, furniture, tools, electrical appliances, sporting goods and other merchandise.

C. During the year ending June 1, 1970, which period is representative of its operations during all times material herein, Sears, in the course and conduct of its business, sold and distributed at retail, goods, wares and merchandise valued in excess of $500,000 at each location in paragraph 3B.

D. During the year ending June 1, 1970, which period is representative of its operations during all times material hereto, Sears, in the course and conduct of its business operations, purchased and caused to be transported and delivered at each of its places of business in the States of Missouri and Illinois in paragraph 3B, clothing, furniture, tools, electrical appliances, sporting goods and other merchandise valued in excess of $50,000 of which goods and materials valued in excess of $50,000, were transported and delivered to each of its places of business in the Metropolitan Area of St. Louis, directly from points located outside the States respectively of Missouri and Illinois.

4.

A. Terminal Freight Cooperative Association (hereinafter called Association) is a nonprofit association, consisting of 46 companies including *inter alia*, May Department Stores, Inc., (hereinafter called May) and Sears.

B. Association is engaged in the business of receiving less-than-carload and less-than-truckload shipments, consolidating such shipments into carload lots and reshipping goods to its members' places of business in various locations throughout the United States.

C. Members of the Association individually have annual gross sales in excess of $500,000, and each such member,

including May and Sears, annually receives goods, wares and merchandise in Missouri valued in excess of $50,000, directly from points located outside the State of Missouri.

5.

A. Terminal Freight Handling Company, (hereinafter called Handling Company) is a nonprofit Delaware corporation authorized to do business in the State of Missouri.

B. Handling Company is engaged in the handling, consolidation and shipment of freight and acts as the manager of Association. It operates 36 facilities in 24 states and the District of Columbia including a terminal at 924 Cerre Street in St. Louis, Missouri.

C. Handling Company annually receives in excess of $1 million from services supplied to members of the Association in connection with the movement of freight in interstate commerce.

6.

A. May is a retail department store enterprise authorized to do business in the State of Missouri.

B. May maintains retail department stores in the Metropolitan Area of the City of St. Louis, each of which stores individually and collectively annually sells goods, wares and merchandise valued in excess of $1 million.

C. May annually purchases from suppliers in states other than the State of Missouri, goods, wares and merchandise valued in excess of $50,000, which goods are shipped from said other states directly to May at each of its facilities in the State of Missouri.

7.

A. Dependable Service Company, (hereinafter called Dependable) has been at all times material herein a corporation authorized to do business in the State of Missouri.

B. Dependable maintains an office and place of business at 1024 South Vandeventer in the City of St. Louis and State of Missouri where it is and has been at all times material herein engaged in the business of repairing electrical appliances.

C. During the year ending June 1, 1970, which period is representative of its operations at all times material hereto Dependable, in the course and conduct of its business operations, furnished services to Sears valued in excess of $50,000.

8.

A. Action Service Company, (hereinafter called Action) is and has been at all times material herein a corporation au orized to do business in the State of Missouri.

B. Action at all times material herein has maintained an office and place of business at 3528 Wismer Street in the City of St. Louis and State of Missouri where it is and has been at all times material herein engaged in the business of repairing electrical appliances.

C. During the year ending June 1, 1970, which period is representative of its operations at all times material herein, Action, in the course and conduct of its business operations, purchased and caused to be delivered to its place of business at 3528 Wismer Street electrical and mechanical parts and appliances valued in excess of $50,000, which parts and appliances were delivered directly to it in the State of Missouri from points located outside the State of Missouri.

9.

Each Be-Rite, Sears, Association, Handling Company, May, Dependable and Action is now and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and a person in commerce or in an industry affecting commerce within the meaning of Section 8(b) (4) of the Act.

10.

Respondent is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

11.

At no time material herein has Respondent had any labor dispute with Sears, the Association, Handling Company or May.

12.

At all times material herein Respondent Union has had a labor dispute with Be-Rite concerning the wages, hours, terms and conditions of employment of Be-Rite's employees.

13.

A. Commencing on June 9, 1970, Respondent in furtherance of its dispute with Be-Rite referred to in paragraph 12 above has picketed Sears at its stores located at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 490 Northwest Plaza, 7412 Manchester Avenue and at Sears' warehouses at 8950 Pershall and 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis and State of Missouri, and at Sears' stores at 1001 State Street in East St. Louis, Illinois, and at 309 Piasa in Alton, Illinois.

B. Commencing on or about June 10, 1970, Respondent in Furtherance of its dispute with Be-Rite referred to in paragraph 12 above picketed Association, Handling Company and May in the vicinity of 924 Ceere Street, St. Louis, Missouri.

14.

Commencing on or about June 9, 1970, and continuing to date, Respondent by its officers, agents and representatives, has engaged and is engaging in and by picketing, requests, appeals, orders, instructions and other means has induced and encouraged and is inducing and encouraging individuals employed by Sears, the Association, Handling Company, May, Dependable, Action and other persons engaged in commerce or in industries affecting commerce to engage in a refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services for their respective employers and has threatened, coerced and restrained Sears, the Association, Handling Company, May, Dependable, Action and other persons engaged in commerce or in industries affecting commerce.

15.

Objects of the acts and conduct of Respondent set forth in paragraphs 13 and 14 above were and are:

A. To force or require the Association, Handling Company, May, Dependable, Action and other persons engaged in commerce or in an industry affecting commerce to cease doing business with Sears.

B. To force and require Sears to cease doing business with Be-Rite.

16.

Respondent by the acts and conduct referred to in paragraphs 13, 14 and 15 above, and by each of said acts, has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

17.

The acts of Respondent described in paragraphs 13, 14 and 15 above, occurring in connection with operations of Association, Handling Company, May, Sears and Be-Rite, described in paragraphs 2, 3, 4, 5 and 6, above, have a close intimate and substantial relation to trade, traffic, and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 8(b)(4)(i) and (ii)(B) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 27th day of July 1970, at 10 a.m. (CDST), or as soon thereafter as you may be heard, at 1040 Boatmen's Bank Building, 314 North Broadway, St. Louis, Missouri, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person or otherwise, and give testimony. Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Rela-

tions Board, an original and 4 copies of an answer to said complaint within 10 days from the service thereof and that unless it does so all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at St. Louis, Missouri, this 2nd day of July 1970.

/s/ JOSEPH H. SOLIEN
Joseph H. Solien, Regional Director
Fourteenth Region
National Labor Relations Board
1040 Boatmen's Bank Building
314 North Broadway
St. Louis, Missouri 63102

UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Respondent.

} Civil No. 70 C 317(2)

ORDER.

This matter is pending on motions of Sears, Roebuck and Company, Terminal Freight Handling Company, and Terminal Freight Cooperative Association to intervene as full parties in this litigation, and upon the proposed intervenors' objections to a proposed stipulation petitioner and respondent presented to the Court. The Court has been duly advised by briefs of all parties and by oral argument.

IT IS HEREBY ORDERED that the motions of Sears, Roebuck and Company, Terminal Freight Handling Company, and Terminal Freight Cooperative Association to intervene be

and the same are denied. However, these parties will be notified of all actions by the petitioner and respondent in this case, and will be permitted at all times to introduce evidence, appear at hearings, and file briefs and keep the Court advised of any matters that should be brought to the attention of the Court.

IT IS FURTHER ORDERED that the proposed stipulation entered into between the petitioner and respondent is disapproved.

IT IS FURTHER ORDERED that the matter be set down for hearing on Wednesday, July 15, 1970, at 10:00 a.m., at which time the respondent is directed to show cause why a temporary injunction should not be issued.

IT IS FURTHER ORDERED that the Clerk of the Court shall note the names of the attorneys for the proposed intervenors on the docket and they shall be sent copies of all pleadings, memoranda, and orders by the Clerk, and the petitioner and respondent shall also send copies of all pleadings and briefs which they may file to attorneys for the proposed intervenors.

Dated this 8th day of July, 1970.

/s/ James H. Meredith,
United States District Judge.

UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Respondent.

} Civil No. 70 C 317(2)

STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys for the respective parties hereto, subject to the approval of the Court, that:

1. Pending final disposition of the matters presently pending before the National Labor Relations Board (herein called the Board) in connection with charges and amended charges filed by Sears, Roebuck and Co. in Case No. 14-CC-603 and charges filed by Terminal Freight Cooperative Association and Terminal Freight Handling Co. and May Department Stores Company in Case No. 14-CC-604, Respondent Miscellaneous Drivers and Helpers Union,

Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called Respondent), its officers, representatives, agents, servants, employees and all members and persons acting in concert or participation with it will not:

(a) Picket at or in the vicinity of Sears, Roebuck and Co.'s retail stores at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 490 Northwest Plaza, 7412 Manchester Avenue, or at Sears, Roebuck and Co.'s warehouses at 8950 Pershall or 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis, in the State of Missouri, or at Sears, Roebuck and Co.'s stores at 1001 State Street in East St. Louis, Illinois, and 309 Piasa in Alton, Illinois.

(b) Picket at or in the vicinity of the premises known and numbered as 924 Cerre Street in the City of St. Louis and State of Missouri.

(c) In any manner or by any means including picketing, orders, directions, instructions, requests or appeals, however given, made or imparted or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engage in, or induce or encourage any individual employed by Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co. and May Department Stores Company, or by any other person engaged in commerce or in any industry affecting commerce to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any service, or in any manner or by any means threaten, coerce or restrain Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight

Handling Co., and May Department Stores Company or any other person engaged in commerce or an industry affecting commerce

where in connection with the acts and conduct set out in subparagraphs (a), (b) and (c) hereof an object thereof is to force or require Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co., and May Department Stores Company, or any other person to cease using, selling, handling, transporting or otherwise dealing in the products of or to cease doing business with Be-Rite Delivery Service, Inc. or Sears, Roebuck and Co.

2. In the event that the Regional Director for the Fourteenth Region of the Board, after investigation of an alleged breach by Respondent of any of the provisions of paragraph 1 of this Stipulation, thereupon files with the Court an Affidavit stating that he has found probable cause to believe that Respondent has breached the provisions of paragraph 1 of this Stipulation, the Court may, forthwith enter a Temporary Injunction against said Respondent in the form set forth in Exhibit (A) attached hereto. In this connection, Respondent waives a further hearing before the Court, as well as the making of Findings of Fact and Conclusions of Law by the Court.

3. This case shall in the meanwhile remain on the Docket of this Court and upon compliance by Respondent with its obligation undertaken hereunder and upon the final disposition of the matters pending before the Board, as aforesaid, the Petitioner shall cause this proceeding to be dismissed.

4. The making and execution of this Stipulation does not constitute an admission by Respondent that it has engaged in unfair labor practices.

Respondent Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by signing this Stipulation, acknowledges receipt of a copy of the petition upon it and fully enters its appearance in Case No. 70C 317(2) now pending before this Court.

Dated at St. Louis, Missouri, this 9th day of July 1970.

/s/ JOHN S. STEVENS
John S. Stevens
Attorney for Petitioner,

/s/ NORMAN W. ARMBRUSTER
Attorney for Respondent.

Approved and so ordered this 9th day of July, 1970.

/s/ JAMES H. MEREDITH
United States District Judge.

UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, *Petitioner,* *vs.* MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Respondent.*	Civil No. 70 C 317(2)

NOTICE OF APPEAL.

Notice is hereby given that Sears, Roebuck and Co. ("Sears"), charging party in the underlying proceedings before the National Labor Relations Board, and maintaining that it is a proper party to this suit, hereby appeals to the United States Court of Appeals for the Eighth Circuit from the Order of this Court entered on July 8, 1970, insofar as that Order denies the motion of Sears to intervene herein, and insofar as the said Order refuses

to accept the Entry of Appearance of Sears as a party and refuses to accord Sears status as a party herein.

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By /s/ D. J. SULLIVAN
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231-5833
Attorneys for Sears, Roebuck and Co., proposed Intervenor and Charging Party in the underlying Labor Board proceeding.

(Dated: July 10, 1970)

UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Respondent.

} Civil No. 70 C 317(2)

NOTICE OF APPEAL.

Notice is hereby given that Terminal Freight Handling Company ("Terminal") and Terminal Freight Cooperative Association ("Association"), charging parties in the underlying proceedings before the National Labor Relations Board, and maintaining they are parties to this suit, hereby appeal to the United States Court of Appeals for the Eighth Circuit from the Order of this Court entered on July 9, 1970, insofar as that Order denies the motion of Terminal and Association to be made full parties Litigant herein, and insofar as the said Order refuses to accept the appearance and participation of Terminal and

Association as parties and refuses to accord Terminal and Association rights and status as parties herein.

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Attorneys for Terminal Freight Handling Company and Terminal Freight Handling Association, proposed parties-intervenors and charging Parties in the underlying Labor Board proceedings.

(Dated: July 16, 1970)

UNITED STATES COURT OF APPEALS.

For the Eighth Circuit.

Nos. 20,407 and 20,418.

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on Behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner-Appellee,

vs.

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondent-Appellee,

and

SEARS, ROEBUCK AND CO.,

and

TERMINAL FREIGHT COOPERATIVE ASSOCIATION and TERMINAL FREIGHT HANDLING CO.,

Appellants.

Appeals from the United States District Court for the Eastern District of Missouri.

[March 12, 1971.]

Before GIBSON and BRIGHT, *Circuit Judges*, and MCMANUS, *District Judge*.

GIBSON, *Circuit Judge.*

The question presented in this consolidated appeal is whether a charging party in an unfair labor practice complaint before the National Labor Relations Board under § 8(b)(4)(B) of the National Labor Relations Act, 29 U. S. C. § 158(b)(4)(B), which requires the Board Regional Director to file for injunctive relief under § 10(l),[1] is entitled to the status of a full party litigant in the district court injunctive proceeding. And if not, is the charging party entitled to intervene as of right in that proceeding?

The appellants, Sears, Roebuck and Company, Terminal Freight Cooperative Association and Terminal Freight Handling Company,[2] filed separate charges with the Regional Director of NLRB alleging that the appellee Union (respondent below) was conducting an illegal secondary boycott against the appellants in violation of § 8(b)(4)(B). After determining that the complaint should issue, the Director filed for injunctive relief in the District Court pursuant to § 10(l).[3] Appellants sought to appear as full party litigants or, alternatively, to intervene in the injunctive proceeding. The Regional Director as petitioner and the respondent Union in the injunctive proceeding opposed

1. All section references, unless otherwise indicated, refer to the National Labor Relations Act, as amended.

2. Terminal Freight Handling Company was a co-charging party with Terminal Freight Cooperative Association. Both will hereinafter be referred to as "Terminal."

3. Prior to the filing of the Director's petition for injunctive relief, both Sears and Terminal had filed a complaint seeking to compel the Director to file a petition for injunctive relief against the Union. After the filing of the Director's petition, Sears withdrew its complaint while Terminal moved only for a partial dismissal of its complaint (insofar as it sought to compel the Director to file for affirmative injunctive relief), and then amended its complaint to seek a declaratory judgment on the propriety both of the Director's initial refusal to proceed and of the still-existing internal agency rule which dictated or permitted his initial refusal to act. This case is currently pending in the District Court.

the appellants appearing as full party litigants or intervening as parties on the stated ground that § 10(l) did not accord to charging parties full rights as party litigants in the injunctive proceeding.

The District Court, Chief Judge James H. Meredith, denied the appellants full party status and denied them the right to intervene. However, appellants were permitted a limited appearance: the right to be present with counsel at the hearings, to introduce evidence, to file briefs, to be informed of all actions taken in the case, to keep the court advised of pertinent developments and to receive copies of all documents filed.

The Regional Director, as petitioner in the injunctive proceeding, reached a unilateral settlement stipulation in lieu of injunctive relief with the respondent Union over the objection of the charging parties, the appellants in this appeal. The Court required certain modifications in the settlement stipulation and then approved the stipulation as revised on July 9, 1970.

The Court-approved revised settlement stipulation is thought by the appellants to be inadequate for many reasons and from their viewpoint it might well be. However, the sufficiency or merits of the stipulation are not now before this court nor are the merits of the unfair labor practice charges pending before the Board. The only issue presented on this appeal is the propriety of the District Court's order denying full party status to the appellants in the § 10(l) proceeding.[4]

Following the approval of the revised stipulation in lieu of injunctive relief, the Board sought to dispose of

4. The appellants' request for a stay of the District Court's order approving the stipulation in lieu of injunctive relief pending appeal was first granted by this Court and then vacated on August 12, 1970. Appellants filed a petition for certiorari on this issue, which petition was denied by the Supreme Court on January 12, 1971.

the basic complaint against the Union for unlawful secondary boycott and picketing activity by means of a settlement stipulation purporting to remedy the charged unfair labor practice. On July 17, 1970, appellants filed a complaint in the District Court alleging that the Director had violated their rights under the Act and the Board's rules and regulations by excluding them from settlement discussions and depriving them of essential facts in connection with settlement deliberations, and sought to enjoin the Director from approving any settlement or engaging further in settlement discussions without the informed participation of the charging parties. On July 30, the District Court sustained the Director's motion to dismiss that cause for lack of jurisdiction. The charging parties appealed and sought a temporary stay of the District Court decision pending resolution of the appeal, which is now pending in a separate proceeding. This court granted the stay on August 7, but upon further consideration, vacated the stay on August 10.

On August 11, the charging parties filed in the United States Supreme Court an application for a temporary restraining order staying the District Court's order and temporarily enjoining the Director. This application was denied on August 19. Consequently, the settlement stipulation reached by the Regional Director and the Union dated July 24 is presently before the General Counsel for approval.

I.

We first consider the Union's contention that the issue of the charging party's status in § 10(l) proceedings is now moot since the dispute between the Union and the primary employer Be-Right Company has been settled and there is no longer any strike or picketing activity of any kind. The Board at oral argument urged that the case in

its present posture is not moot since the General Counsel has not yet approved the settlement stipulation reached by the Regional Director and the Union concerning the unfair labor practice charged. We agree with the Board.[5]

We do not think this case is moot because the probability of repetition of unlawful secondary boycott activity by the Union in the instant case is sufficient to satisfy the "mere possibility" test articulated in *United States* v. *W. T. Grant Co.*, 345 U. S. 629, 633 (1953). In our view, a case is justiciable "if there is a possibility that the challenged activity will recur and if it is possible that the challenging party will be affected should recurrence take place. . . ." Comment, *Mootness on Appeal in the Supreme Court*, 83 Harv. L. Rev. 1672, 1690 (1970). *See Diamond* v. *Bland*, ... Cal. Rptr. ....., ... P. 2d ..... (En banc No. 29803, Dec. 16, 1970). *Cf. Moore* v. *Ogilvie*, 394 U. S. 814 (1969); *Southern Pac. Terminal Co.* v. *ICC*, 219 U. S. 498 (1911). Nonetheless, we are cognizant that should the pending settlement stipulation be approved by the

5. In *Samoff* v. *International Association of Machinists District Lodge No. 1*, 420 F. 2d 952 (3d Cir. 1969), the Third Circuit held the execution of a collective bargaining agreement mooted an appeal on a similar issue. We are not disposed to follow this holding as we think it is contrary to the teachings of the Supreme Court in *United States* v. *W. T. Grant Co.*, 345 U. S. 629, 632 (1953):

> "[V]oluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i.e., does not make the case moot. • • • A controversy may remain to be settled in such circumstances, • • • *e.g.*, a dispute over the legality of the challenged practices. • • • The defendant is free to return to his old ways. This, together with a public interest in having the legality of the practices settled, militates against a mootness conclusion." (Citations and footnote omitted.)

See also Parham v. *Southwestern Bell Telephone Co.*, 433 F. 2d 421, 426 (8th Cir. 1970); *Bakery Sales Drivers Union* v. *Wagshal*, 333 U. S. 437, 442 (1948); *NLRB* v. *Mexia Textile Mills, Inc.*, 339 U. S. 563, 567 (1950); *NLRB* v. *Raytheon Co.*, 398 U. S. 25 (1970).

General Counsel prior to our decision, these proceedings would be mooted under the holding of *Sears, Roebuck & Company* v. *Carpet Layers Local Union No. 119,* 397 U. S. 655 (1970). However, we feel in this case there are cogent reasons for passing upon the merits of the appeal even should the pending settlement stipulation be so approved. We are impressed with the argument of appellants that the alleged errors committed in the § 10(l) proceedings are inherently evasive of review since it is not feasible to perfect and obtain an appellate review prior to the Board's "final adjudication." Consequently, since we believe that the doctrine of mootness should not be used to perpetually frustrate judicial review of issues of public importance arising in otherwise justiciable cases, the following comments are appropriate:

> "If the Court is confronted with a substantial likelihood that an issue it believes moot will always arrive there in the same condition because of the inherent nature of the issue, the Court should not refuse review on the basis of mootness. The policy overrides the first policy of ensuring the effective functioning of the adversary system, so demonstration of the litigants' personal stake should not be required. The Court must acknowledge that the real choice is not between taking or not taking risks with the quality of the judicial process, but between securing or not securing the values of appellate review—stability, uniformity, and objectivity."
>
> 83 Harv. L. Rev. at 1692 (footnote omitted).

We conclude that these appeals are not moot; furthermore, the policy of ensuring judicial review of issues of public importance which are inherently evasive of review compels us not to refuse review on the basis of mootness. *See ITT Lamp Division of the Int'l Telephone & Telegraph Corp.* v. *Minter,* ..... F. 2d ..... (1st Cir. Nos. 7720 and 7749, Dec. 4, 1970).

We next proceed to the merits of the appeal. Section 10(l) of the Act provides that when a charge is filed alleging an illegal secondary boycott, the Board's regional official shall give priority to the investigation of the charge and if, after investigation, the officer or regional attorney "has reasonable cause to believe such charge is true and that a complaint should issue," he shall petition the federal district court on behalf of the Board "for appropriate relief pending the final adjudication of the Board with respect to such matter." The statutory language on its face draws a distinction between the status to be afforded a labor organization against whom injunctive relief is sought by the Board and the charging party. Section 10(l) provides that service of legal process upon certain officers and agents of the union "shall constitute service upon the labor organization and make such organization a party to the suit." However, as to "any person involved in the charge," including the charging party, § 10(l) requires only that such person be served with notice of the filing of a § 10(l) petition and be "given an opportunity to appear by counsel and present any relevant testimony. . . ."[6]

The Board's position in opposing full party status to charging parties in a § 10(l) proceeding for injunctive

6. Section 19(l) in pertinent part reads:

"(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(A), (B), or (C) of section 158(b) of this title, * * * the preliminary investigation of such charge shall be made forthwith. . . . If, after such investigation, the officer or regional attorney . . . has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition [the appropriate] United States district court . . . for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law. . . ."

relief is based primarily upon the wording of § 10(l) and its legislative history. It is clearly stated that only the Board can petition for § 10(l) injunctive relief, and the Board can only petition when an unlawful secondary boycott or jurisdictional strike is charged and its designated officer or regional attorney "has reasonable cause to believe such charge is true." The injunctive proceedings are ancillary to the main unfair labor practice proceeding filed under § 10(a) through (d) of the Act, which is committed solely to the Board for its determination subject to right of appellate review. The district court's function in the § 10(l) ancillary proceeding is limited to determining whether there is reasonable cause to believe that the unfair labor practice charge will be sustained before the Board and whether temporary injunctive relief would be just and proper under the circumstances. If the district court concludes that injunctive relief or a temporary restraining order is just and proper, it may grant such relief "pending the final adjudication of the Board with respect to" the unfair labor practice charged. The findings of the district court in a § 10(l) proceeding are not binding on the Board in deciding the case on the merits or on the Court of appeals in reviewing the Board's decision under § 10(e) and § 10(f) of the Act. *NLRB* v. *Denver Building Council,* 341 U. S. 675 (1951); *McLeod* v. *Local 25, Int'l Brotherhood of Electrical Workers,* 344 F. 2d 634 (2d Cir. 1965). Thus, a § 10(l) injunction is effective only during the pendency of the administrative proceedings and is not a final adjudication of the parties' rights on the merits.

The legislative history of § 10(l) makes clear that the power *to initiate* the injunction suit is restricted to the

Board alone.[7] The courts have uniformly recognized this congressional mandate. *Bakery Sales Drivers Union* v. *Wagshal*, 333 U. S. 437, 442 (1948). The only remedy allowed a private party at his own instance is a suit for damages under § 303 of the Act, 29 U. S. C. § 187.

Appellants claim this legislative history is irrelevant to the question before us because they conceded that charging parties cannot institute the injunction proceeding authorized under § 10(l). The ultimate question is the nature of the role charging parties may play in those proceedings *after* they have been instituted by the Board, and appellants contend that there is no basis to conclude that one whose vital interests are involved in a suit is precluded from functioning as a party therein because the right to institute is limited to another. It is urged that construing the statute to allow charging parties to appear as parties with a right to seek review of adverse judicial decisions would not be incompatible with the Board's position that it should retain substantial control of the proceedings.[8] Appellants further reason that since charging parties have

7. On the Senate floor, Senator Ball of Minnesota proposed an amendment to the proposed § 10(l) which would have allowed the injured party "suffering from a secondary boycott or jurisdictional strike * * * the right to go directly into a district court and seek injunctive relief." 93 Cong. Rec. 4835 (1947). Thereafter, Senator Taft of Ohio proposed that the language of the Senate bill authorizing the Board alone to obtain injunctive relief be retained and that the charging party be given instead the "right to sue for damages." 93 Cong. Rec. 4843-4844 (1947). The Ball amendment was subsequently defeated by a vote of 62 to 28. 93 Cong. Rec. 4847 (1947).

8. Appellants argue that the Board's control is evident in that only the Board can determine whether proceedings under § 10(l) should be instituted; only the Board can institute them; and only the Board can determine which violations of the law are sufficient under the statute and what relief is appropriate in order to remedy the violations.

party status in all proceedings before the Board,[9] whether expressly provided by Congress or not, Congress' failure to specifically label charging parties as parties in § 10(l) proceedings is no basis for holding they do not have such status. *UAW Local 238* v. *Scofield,* 382 U. S. 205 (1965) is relied upon for the principle of statutory construction that the failure of Congress to explicitly articulate certain rights does not evidence a congressional intent that such rights do not exist.

We think the attempt to interpret § 10(l) so as to accord charging parties full party status in a § 10(l) proceeding fails because of lack of legislative support. While there exist cogent reasons why charging parties should be accorded full party status, these reasons should be addressed to Congress, the policy making branch of the government. In enacting § 10(l), Congress created a narrow exception to the Norris-La Guardia Act in allowing injunctions to be issued in labor disputes. While the role of private parties in this facet of the labor law field was considered, such parties were not given the right to privately seek injunctive relief nor were they designated as or given the status of full party litigants. The interpretation argued by appellants twists the plain meaning of the statute as written and is at odds with the overall scheme of injunctive relief embodied in the National Labor Relations Act and the Norris-LaGuardia Act. An apt

9. As charging parties before the NLRB, the appellants are recognized and accorded full party status under the NLRB regulations and thus possess all of the rights usually accorded a party litigant. By filing a charge, the charging party becomes a full party before the General Counsel in the investigative stage, before a Trial Examiner after Complaint has issued and with full appellate rights, before the Board on review of the Trial Examiner's decision, in the Court of Appeals after the Board's decision, and with the right independently to seek certiorari from the Supreme Court. These rights as a full party litigant appearing before the Board were fully recognized in *UAW Local 238* v. *Scofield,* 382 U. S. 205 (1965).

analysis of this point is made in *Sears, Roebuck & Company* v. *Carpet Layers Local No. 419,* 410 F. 2d 1148, 1150 (10th Cir. 1969) (footnote omitted), *vacated as moot,* 397 U. S. 655 (1970):

> "Accordingly, when an exception to that Act, such as is here involved, is relied upon to support the jurisdiction of the court, the language employed to articulate that exception will not be given any more expansive an interpretation than is clearly warranted. Viewed in that context, the limited rights conferred upon a charging party in a § 10(l) proceeding, the right 'to appear by counsel and present any relevant testimony,' must be taken to mean just that, no more and no less. To read into that restricted right of participation, the right to initiate appeals, a right traditionally available only to full party litigants, would not only violate every sound principle of statutory construction, but would require a complete disregard for the sensitivity of the labor injunction problem."

The two cases relied upon by appellants, *UAW Local 238* v. *Scofield,* 382 U. S. 205 (1965) and *Retail Clerks Union* v. *Food Employers Council, Inc.,* 351 F. 2d 525 (9th Cir. 1965), are not particularly helpful to their position. Although the N. L. R. Act does not specifically provide for intervention at the appellate level, *Scofield* held that both the successful charging party and the successful charged party in NLRB proceedings have a right to intervene in the court of appeals' proceeding to review a final Board order. There were two very significant considerations which persuaded the Court to reach that conclusion. Allowing intervention would pervent duplication of appeals and would ensure that a charging party who prevailed before the Board after a full proceeding on the merits could not be deprived of the permanent relief which he sought and obtained through the administrative proceedings without having had an adequate opportunity to present his views.

Appellants contend in the alternative, that if their contention that they have the status of parties in the § 10(l) proceeding is rejected, the rationale of *Scofield* requires that they be allowed to intervene in the district court proceeding since the same private interests are at stake and the same possibility of injury to those vital interests exists. It is asserted that the principle recognized in *Scofield*—that the Board does not have exclusive authority to represent and protect the particular and private interests of charging parties—applies as a matter of logic to all proceedings in all tribunals where those interests are involved and require informed and interested protection.

Professor Moore has answered this contention quite well. He points out that *Scofield* was primarily grounded

> ". . . on the policy of avoiding multiple appeals. That is, if the successful party in the proceeding before the Board were denied participation in the appellate review, and the court of appeals were to reverse the board's decision, the excluded party might later be able to raise a subsequent appeal. . . .
>
> "Where the prevention of multiple appeals is not at stake, the rule should not apply. Thus when the NLRB seeks district court injunctive relief against the respondent, pending Board proceedings, the charging party has no right to intervene." 3B J. Moore, *Federal Procedure* ¶ 24.06[3.-8] (2d. ed. 1969) (footnotes omitted).

We also note that there is no language in § 10(l) comparable to that in § 10(f) relied upon by *Scofield* which would specifically authorize an appeal by the charging party when he is aggrieved by the denial of injunctive relief. There may be some question as to whether Congress recognized the existence of private rights within the § 10(l) injunctive process. *But see Retail Clerks Union,* 351 F. 2d at 529 n. 2. The Senate report commenting on

the proposed § 10(l) (which was substantially in its present form) stated:

> "[W]e have provided that the Board, acting in the *public interest and not in vindication of purely private rights,* may seek injunctive relief in the case of all types of unfair labor practices and that it shall also seek such relief in the case of strikes and boycotts defined as unfair labor practices." S. Rep. No. 105, 80th Cong., 1st Sess. at 8. (emphasis added.)

We conclude that the charging parties cannot obtain the status of parties in § 10(l) proceedings indirectly through intervention. *See Sears, Roebuck & Co.* v. *Carpet Layers Local No. 419,* 410 F. 2d at 1151; *San Francisco-Oakland Newspaper Guild* v. *Kennedy,* 404 F. 2d 37 (9th Cir. 1968).

Retail Clerks, supra, held that the district court has the power to grant a § 10(l) injunction originally petitioned for by the Regional Director notwithstanding the fact that the latter had meanwhile entered into a stipulation with the respondent union which he believed obviated the need for injunctive relief. The Ninth Circuit based its holding on the ultimate responsibility the district court has under § 10(l) to determine the appropriateness of temporary injunctive relief, reasoning that to hold otherwise would make the court little more than a rubber stamp for the Regional Director. The Court emphasized that its holding was concerned only with the respective roles to be played by the Regional Director and the district court and that it was not defining "the limits of the scope of participation to be permitted the charging parties." 351 F. 2d at 529 n. 2. It should be noted that the appeal was taken by the respondent union and that the court of appeals denied the charging parties' motion to intervene as parties, but granted them permission to appear as amici curiae. It of course follows *a fortiori* that the charging parties did not have full party status in the district court

proceeding since their motions to intervene in the appellate proceedings were denied.

This latter holding of *Retail Clerks* also undercuts appellants' argument that they have a right to intervene in the § 10(l) proceedings as parties because they have an independent right to secure appellate review of the district court ruling. No court that has considered the question of the charging party's independent standing to seek appellate review of an adverse § 10(l) decision has accorded the charging party this right. *Sears, Roebuck & Co.* v. *Carpet Layers Local No. 419, supra; Henderson* v. *Int'l Union of Op. Eng. Local 701,* 420 F. 2d 802, 806 n. 2 (9th Cir. 1969); *see also Kennedy* v. *San Francisco-Oakland Newspaper Guild,* 430 F. 2d 317 (9th Cir. 1970). *But see Houston Insulation Contractors Ass'n* v. *NLRB,* 339 F. 2d 868 (5th Cir. 1964) (2-1 decision involving an appeal from the Board's final order); *McLeod* v. *General Electric Co.,* 366 F. 2d 847 (2d Cir. 1966) (Caption refers to charging parties as intervenors in appeal from grant of § 10(j) injunction, but issue of intervention was not litigated), *judgment set aside and remanded for further proceedings,* 385 U. S. 533 (1967). Appellants' intervention argument based on their alleged right to appellate review of the district court's § 10(l) decision must fall.

Nonetheless, appellants contend that under the tests set out in *Association of Data Processing Service Organizations, Inc.* v. *Camp,* 397 U. S. 150 (1970) and *Barton* v. *Collins,* 397 U. S. 159 (1970), charging parties have standing to seek review of the district court's decision on temporary injunctive relief under § 10(l) since they have sustained injuries pursuant to an alleged misapplication of a statute under which they raise their claims. It is asserted that the charging parties were injured here because the stipulation in lieu of injunctive relief approved by the court was not an adequate substitute for injunctive relief.

Both *Data Processing* and *Barlow* presented the question of what interest one must allege in order to establish that he is sufficiently aggrieved by an *administrative* order to be entitled to judicial review under the Administrative Procedure Act, 5 U. S. C. § 701 et seq., of the adverse *agency* action. The decisions in both cases can fairly be said to represent a trend "toward enlargement of the class of people who may protest administrative action" where statutes are concerned. *Data Processing Service,* 397 U. S. at 154. Since we are concerned with the issue of whether charging parties have the right to obtain appellate review from a judicial order in a § 10(l) proceeding and not the right of judicial review of administrative action, *Data Processing Service* and *Barlow* are not controlling.

The final contention made by appellants is that the district court committed reversible error in refusing to permit them to intervene as of right under Rule 24(a)(2), Fed. R. Civ. P., which provides that an applicant shall be permitted to intervene

> ". . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

We disagree. Intervention as of right presupposes that the applicant has a right to maintain a claim for the relief sought, a right which the charging parties clearly do not have. It is also difficult for us to find that the Board, possessed of expertise developed through years of experience and which has independently determined that there is reasonable cause to believe that the secondary boycott charge will be sustained before the Board, will not adequately represent the interest involved. *See Reynolds*

v. *Marlene Industries Corp.*, 250 F. Supp. 722, 724 (S. D. N. Y. 1966).

Judgment of the District Court denying appellants full party status and the right to intervene is affirmed.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

MISCELLANEOUS DRIVERS AND HELPERS UNION LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (Be-Rite Delivery Service, Inc.) and SEARS, ROEBUCK AND CO.	Case No. 14-CC-603.
MISCELLANEOUS DRIVERS AND HELPERS UNION LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA and TERMINAL FREIGHT COOPERATIVE ASSOCIATION AND TERMINAL FREIGHT HANDLING COMPANY AND MAY DEPARTMENT STORES, INC.	Case No. 14-CC-604.

MOTION TO STAY SUBMISSION OF SETTLEMENT AGREEMENT OR, ALTERNATIVELY, TO STAY PROCESSING OF SETTLEMENT AGREEMENT.

Sears, Roebuck and Co., Terminal Freight Cooperative Association and Terminal Freight Handling Company (hereinafter collectively referred to as the Charging Party) hereby request the Board to stay submission and withhold acceptance of the Stipulation of Formal Settlement referred to it by the General Counsel on March 19, 1971, pending the decision of the Court of Appeals for the Eighth Circuit in *Sears, Roebuck and Co.* v. *Solien* (Nos. 20462 and

20472), or, alternatively in the event that said Motion is denied, to stay processing of said Stipulation until a decision has been rendered by the Court of Appeals in the above matter, and in either case to also permit the filing of a further statement in support of objections, 30 days after the decision of the Court.

This Motion is based upon the following sound and substantial considerations:

1. Even though Section 101.9(c)(2) of the Board's Statements of Procedure provides that the General Counsel, after approval of a proposed formal settlement agreement, shall submit it to the Board, the Board has the discretion, especially under the compelling circumstances present here, to stay such submission and withhold its acceptance of the transfer of the agreement. In its present posture, the Board here cannot properly review the Stipulation. The Complaint in Case Nos. 20462 and 20472 alleged that the General Counsel, acting in his prosecutorial capacity as defined in Section 3(d) of the National Labor Relations Act, unlawfully denied the Charging Party participatory rights in the negotiations leading to the Settlement Stipulation. The General Counsel's action constituted a final determination; neither the Board nor a Circuit Court under Section 10(e) and (f) of the Act may review prosecutorial decisions of the General Counsel. See *Frito Co.* v. *N. L. R. B.*, 330 F. 2d 458 (9th Cir., 1964). Accordingly, pending the Court's determination as to the propriety of the actions of the General Counsel, the Stipulation should remain within the jurisdiction of the General Counsel.

2. A decision by the Court that the Charging Party is entitled to participate in settlement negotiations would necessarily require that any approved settlement stipulation be set aside and that negotiations, with the participation of the Charging Party, be reinstituted. Thus, the Board's acceptance of this Settlement Stipulation prior to

the decision of the Court in *Sears* would be, at best, an empty exercise of jurisdiction; any action taken by the Board prior to the decision would be premature and abortive.

3. The General Counsel denied the Charging Party's request to defer submission of the Stipulation to the Board on the basis "of the favorable decision . . . received from the District Court," in Case No. 70 C 356(1). Although the General Counsel thus implies that the position of the Charging Party is meretricious and not deserving of consideration, the very opposite is true. Indeed, the position of the General Counsel was specifically rejected by the Eighth Circuit. That Court flatly denied the General Counsel's Motion for Summary Affirmance of the "favorable decision" of the District Court, thereby destroying the very basis of the General Counsel's decision not to defer submission of the Stipulation.

4. The question of the right of the Charging Party to participate in settlement negotiations, at issue in Case Nos. 20462 and 20472, is one of widespread significance.[1] For example, it is estimated that ninety per cent of charges found meritorious are settled. Thus, the settlement processes are the means by which, for the most part, the National Labor Relations Act is administrated, public rights vindicated and the private rights of respondents and charging parties determined. To illustrate the effect of a decision by the Court concerning the rights of parties to settlements, we have attached an analysis (Exhibits A and B) of all settlement agreements involving Section 8(b)(4) of the Act where objections were filed in the last three

1. The significance of the issues involved in this matter are well illustrated by the enclosed Appellant's Brief in Opposition to Motion for Summary Affirmance, which we commend to the attention of the Board for a full review of the issues involved in Case Nos. 20462 and 20472.

fiscal years. That analysis demonstrates that questions concerning the rights of charging parties with respect to settlement agreements are not isolated, but arise time and time again. In view of this overriding significance of the issues raised in this matter, it would be in the best interests of the Board, as well as of all parties involved, to stay transfer of the Stipulation until the Court has had an opportunity to render its decision. Precipitous action taken now, outside the context of a relevant judicial determination, can only impede and confound the ultimate resolution of this matter; it should be avoided at all costs.

5. As corporate citizens, vitally interested and vitally affected by the administration of the National Labor Relations Act, we welcome an opportunity, in accordance with the suggestion of the Board's Liaison Committee, to make constructive suggestions concerning the administration of the Act. One significant area of national concern is the ineffectiveness of Board settlement agreements, particularly in the 8(b)(4) area. Sears, Roebuck and Co., and Terminal Freight Cooperative Association, which consists of 39 companies operating out of 39 freight terminals, have had considerable experience with secondary boycott situations. That experience can best be presented to the Board in the context of what we hope will be an elucidating court decision on the rights of charging parties in the settlement area.

6. We wish to call to the attention of the Board the decision of the United States Court of Appeals for the Fifth Circuit in *Concrete Materials of Georgia, Inc.* v. *N. L. R. B.* (March 17, 1971), No. 29559, wherein the Court said that:

> Under this analysis, it is clear that the charging party has the right to contest any proposed settlement between the Regional Director and the charged party both by objecting to it before the Board and by petitioning for review if the Board enters an order over

his objection based upon the agreement. To insure that the charging party's objections are considered by the Board, we feel that the charging party must be afforded (1) an evidentiary hearing on any material issues of disputed fact presented by his objections, see *N. L. R. B.* v. *Brush-Moore Newspapers, Inc.*, 6 Cir., 1969, 413 F. 2d 809, 811, cert. den. 396 U. S. 1002; and (2) a presentation on the record of reasons for acceptance of the settlement agreement as the basis for the order notwithstanding his objection.

To date the Charging Party has no knowledge of the extent of the material issues involved in the settlement agreement, as it was not a party to the settlement negotiations or given certain information it requested. Therefore, at this juncture, the Charging Party is not even in a position to request an evidentiary hearing, as required by *Concrete Materials;* and must await the decision of the Court of Appeals for the Eighth Circuit to be fully advised of its rights with respect to the settlement agreement.

7. Because of the complexity of the issues here involved, in the event that the Court in Case Nos. 20462 and 20472 rejects our contentions, we request a reasonable period of thirty days to file, pursuant to Section 101.9(c)(2), a further statement in support of our objections to the Stipulation. We base this request on the following compelling considerations:

(a) The documents to be submitted and the exhibits to be attached constitute a more voluminous record than is found in most litigated cases. In addition, we must have the opportunity to evaluate fully our position, in light of the Court's decision.

(b) While normally, delay might be unwise or injurious to a party, in the posture of this case, no party—certainly neither the Union nor the Board will in any way be harmed by further delay. As a matter

of fact, any delay encountered thus far in the litigation of this case in Court cannot be attributed to the efforts of Charging Party, but to those of the General Counsel. For example, in Case Nos. 20462 and 20472, the General Counsel took more than 70 days to file its brief in the Court of Appeals. The Charging Party submitted its reply brief in 6 days and consolidated its opposition to the Motion for Summary Affirmance and its brief on the merits in one document so as not to lengthen the briefing schedule. It also requested the Court to grant an expedited briefing schedule in order not to delay this matter any further.

(c) This case presents an excellent vehicle for the Board to use to review its settlement procedures in the hope of achieving more effective settlement agreements. As we can estimate, in view of the fact that the Eighth Circuit normally issues opinions within two or three months after oral argument, the Court's decision will come down within six weeks, a minor and unprejudicial delay at this point may result in a significant opportunity by the Board to engage in full and constructive settlement procedures.

WHEREFORE, it is hereby requested that the Board stay submission and withhold acceptance of the Stipulation of Formal Settlement referred to it by the General Counsel on March 19, 1971, pending the decision of the Court of Appeals for the Eighth Circuit in *Sears, Roebuck and Co.* v. *Solien* (Nos. 20462 and 20472), or, alternatively in the event that said Motion is denied, stay processing of said

Stipulation until a decision has been rendered by the Court of Appeals in the above matter.

Respectfully submitted

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MISCELLANEOUS DRIVERS AND HELPERS UNION LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (Be-Rite Delivery Service, Inc.) and SEARS, ROEBUCK AND CO.	Case No. 14-CC-603
MISCELLANEOUS DRIVERS AND HELPERS LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA and TERMINAL FREIGHT COOPERATIVE ASSOCIATION AND TERMINAL FREIGHT HANDLING COMPANY AND MAY DEPARTMENT STORES, INC.	Case No. 14-CC-604

MOTION TO TOLL TIME TO FILE FURTHER STATEMENT IN SUPPORT OF OBJECTIONS TO SETTLEMENT STIPULATION.

Pending the decision of the Board on the Charging Party's Motion to Stay Submission of Settlement Agreement or, Alternatively, to Stay Processing of Settlement Agreement, the Charging Party requests that the Board toll the time to file a Further Statement in Support of

Objections to Settlement Stipulation and further requests that the Board grant it 30 days from the date said Motion to Stay Submission is determined, to submit its Further Statement in Support of Objections to the Settlement Stipulation.

No party will be harmed by the granting of the extension, and the extension is required because of the voluminous nature of the documents and exhibits to be analyzed, the critical importance of this matter—to the public as well as to the parties involved—and the necessity for a full and detailed exposition of all the issues.

Respectfully submitted,

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April 6, 1971

Mr. George Leet
Associate Executive Secretary
National Labor Relations Board
1717 Pennsylvania Avenue, N. W.
Washington, D. C. 20570

Re: Miscellaneous Drivers and Helpers Union,
Local 610—Case Nos. 14-CC-603 and 604

Dear George:

This will confirm our telephone conversation of last week with respect to our Motions of March 26, 1971 requesting a tolling of the time for filing, pursuant to Section 101.9(c)(2) of the Board's Rules, a further statement with the Board of the charging parties' objections to the proposed settlement agreement in the captioned cases.

You advised me that the time for filing such a statement would be extended until the Eighth Circuit issues its decision in *Sears, Roebuck and Co.* v. *Solien* (Nos. 20462 and 20472). At the time that decision issues, I will so advise you and, if the Court has ruled against the Plaintiffs, a reasonable time will then be provided charging parties for the submission of any further statement.

If this is not in accord with the position of the Board, will you please let me know immediately.

Very truly yours,

LAWRENCE M. COHEN
for LEDERER, FOX AND GROVE
Attorneys for Sears, Roebuck and Co.

LMC:FW

STATUTE INVOLVED.

NATIONAL LABOR RELATIONS ACT.

(61 Stat. 136, 29 U. S. C. Sect. 151, et seq.)

Sec. 10(e), 29 U. S. C. § 160(e):

The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court

may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

Sec. 10(f), 29 U. S. C. § 160(f):

Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such

temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

Sec. 10(g), 29 U. S. C. § 160(g):

The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

Sec. 10(h), 29 U. S. C. § 160(h):

"When granting temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115).

Sec. 10(j), 29 U. S. C. § 160(j):

The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have

jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

Sec. 10(k), 29 U. S. C. § 160(k):

Whenever it is charged that any person has engaged in an unfair-labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directerd to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

Sec. 10(l), 29 U. S. C. § 160(l):

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8(b), or section 8(e) or section 8(b)(7), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary

restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: *Provided further,* That such officer or regional attorney shall not apply for any restraining order under section 8(b)(7) if a charge against the employer under section 8(a)(2) has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D)."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1588

SEARS ROEBUCK AND CO.,
and
TERMINAL FREIGHT COOPERATIVE ASSOCIATION AND TERMINAL FREIGHT HANDLING CO., *Petitioners*,
v.
JOSEPH H. SOLIEN, REGIONAL DIRECTOR OF THE FOURTEENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,
and
MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Respondents*.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF AMICUS CURIAE ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INDEX

	Page
Interest of Amicus Curiae	1
Reasons for Granting the Writ	3
A. The Present Case Raises Significant Issues Regarding the Administration of the Act Which Should Be Resolved by This Court in the Exercise of Its "General Power To Supervise the Administration of Justice in the Federal Courts." Western Pacific R. Corp. v. Western Pacific R. Co., 345 U.S. 247, 260	3
B. The Decision of the Court Below Hinders the Public Interest by Suppressing Evidence and Argument Before the Courts in 10(l) Proceedings	6
C. The Decision of the Court Below Departs from the Better-Reasoned Precedent	7
Conclusion	9

TABLE OF AUTHORITIES

CASES:

Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150	5
Barlow v. Collins, 397 U.S. 159	5
Boys Markets, Inc. v. Retail Clerk's Union, Local 770, 398 U.S. 235	8
Carpet Layers, Local 419 v. NLRB, — F. 2d —, 74 LRRM 2444 (D.C. Cir. 1970)	4
Retail Clerk's Union, Local 137, et al. v. Food Employers Council, Inc., 351 F. 2d 525 (9th Cir. 1965)	6
Sears, Roebuck and Co. v. Local 419, Carpet Layers, 397 U.S. 655	2
The Los Angeles Herald-Examiner, et al. v. Kennedy, Docket No. 350	2
United Automobile Workers v. Scofield, 382 U.S. 205	5, 6, 7
Western Pacific R. Corp. v. Western Pacific R. Co., 345 U.S. 247	3, 6

Page

STATUTES:

Judicial Review Act, 5 U.S.C. § 1038 5

OTHER AUTHORITIES:

II Legislative History of the Labor-Management Reporting Act of 1959 (1959) 3

Senate Report No. 105, 80th Cong., 1st Sess. (1947) ... 3

Thirty-third Annual Report of the National Labor Relations Board (1968) 3

Thirty-fourth Annual Report of the National Labor Relations Board (1969) 2

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INTEREST OF THE AMICUS CURIAE*

The Chamber of Commerce of the United States of America is a federation consisting of a membership of over 3,700 state and local chambers of commerce and

* This brief is filed with the written consent of all parties pursuant to Supreme Court Rule 42(1).

trade associations, with an underlying membership of approximately 5,000,000 business firms and individuals and a direct business membership in excess of 38,000. It is the largest association of business and professional organizations in the United States.

The National Chamber has previously submitted its views with respect to the issue involved in this case, the rights of charging parties to participate in an injunction proceeding under Section 10(l) of the National Labor Relations Act, in its *amicus* brief in support of the petition for writ of certiorari before judgment and in *The Los Angeles Herald-Examiner, et al.* v. *Kennedy,* No. 350, this term. The subsequent grant of the petition for writ of certiorari in *Los Angeles Herald-Examiner,* coupled with the acceptance of a similar petition last term in *Sears, Roebuck and Co.* v. *Local 419, Carpet Layers,* 397 U.S. 655, indicates this Court's awareness of the importance of defining the status of a charging party in a 10(l) case.

The problem here presented is thus a substantial and recurring one,[1] and one which has to date escaped review by this Court by reason of a technical application of the mootness doctrine. See Petition, pp. 11-12. The National Chamber believes that the instant case now presents an appropriate vehicle for this Court to provide the necessary guidance. If a large na-

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[1] Of the total unfair labor practice charges filed against unions under Section 8(b) of the Act during NLRB fiscal year 1969, *32 per cent,* or over 2100 charges, involved alleged violations of Section 8(b)(4). This represents a 13% increase over the 8(b)(4) charges filed in fiscal year 1968. *Thirty-fourth Annual Report of the National Labor Relations Board,* p. 13 (1969).

tional enterprise such as Sears, Roebuck and Co., exercising all possible diligence and expedition, is repeatedly frustrated in its attempt to obtain review by this Court, there is surely little hope for the countless thousands of similarly-situated small employers throughout the nation who cannot pursue as actively such litigation.[2] This case has not yet been rendered moot, and the critical issue involved remains a viable one raised in an appropriate posture for review by this Court.

REASONS FOR GRANTING THE WRIT

A. The Present Case Raises Significant Issues Regarding the Administration of the Act Which Should Be Resolved by This Court in the Exercise of Its "General Power To Supervise the Administration of Justice in the Federal Courts." Western Pacific R. Corp. v. Western Pacific R. Co., 345 U.S. 247, 260.

Congress has recognized that the secondary boycott is a vicious and devastating economic weapon;[3] it is destructive to the free flow of commerce and places the neutral employer in grave jeopardy of losing all or part of his established business. Accordingly, Congress not only outlawed such conduct, but provided an immediate remedy for the protection of the victimized employer by the enactment of Section 10(l) of the National Labor Relations Act, 29 U.S.C. § 169(e). This provision particularly reflects the sense of grave

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[2] Over 50% of all charges involving Section 10(l) in 1969 were filed by small employers with less than 30 employees. *Thirty-third Annual Report of the National Labor Relations Board,* Table 18, pp. 238-9, *supra.*

[3] See, e.g., II *Legislative History of the Labor-Management Reporting Act of 1959,* pp. 989, 1376, 1425, 1446, 1842 (1959); Senate Report No. 105, 80th Cong., 1st Sess. (1947).

congressional concern that such conduct be terminated. Unlike other provisions of the federal laws, this section:

1. Commands the Board to give the investigation of such charges immediate priority over all other charges, and

2. Orders the Board, without exception or allowance for discretion, to petition a federal district court for temporary injunctive relief pending final adjudication upon a showing of reasonable cause to support the merits of the charge.

Indeed, the protection afforded by temporary injunctive proceedings under Section 10(l) constitutes the *only* effective bulwark available to employers subjected to unlawful union recognitional picketing, improper "hot-cargo" agreements and illegal secondary boycotts.[4]

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[4] The protection afforded by a permanent injunction to an employer unlawfully picketed is more illusory than real. The length of time required for the Board to investigate the employer's charge and to issue a complaint, for the Board Trial Examiner and the Board itself to then rule on the complaint and, subsequently, for a court of appeals to enforce any resultant Board order, largely negates the value to the picketed employer of such a proceeding. In *Sears, supra*, for example, the union commenced its picketing on August 7, 1968; the case is still pending before the Board on remand from the District of Columbia Court of Appeals for additional findings. *Carpet Layers 419* v. *N.L.R.B. (Sears, Roebuck & Co.)*, 429 F.2d 747 (D.C. Cir. 1970). Thus far, nearly three years have elapsed with the legality of the underlying dispute still unresolved. Few employers could withstand unlawful picketing of such a duration. Nor can it be said that the delay involved in the *Sears* case presents the unusual situation. See footnote 8 at page 10 of the Petition for Rehearing in *Sears, supra*.

In the face of such a clear congressional purpose, any erosion of the effectiveness of the Section 10(l) remedy cannot be sanctioned. Yet this will be the result of the failure to accord charging parties the status of full "parties", or to permit their right of intervention, in Section 10(l) proceedings. This Court has acknowledged the necessity for conferring such status upon charging parties in proceedings under other provisions of the Act. See, e.g., *United Automobile Workers* v. *Scofield,* 382 U.S. 205. A similar role, as Petitioners suggest, is also contemplated by the Judicial Review Act, 5 U.S.C. § 1038.[5] And a recognition that important private rights, not merely generalized "public rights", are at stake is particularly critical in a 10(l) proceeding where, once the government has instituted suit, the interest of the neutral employer—the strong self-interest of preserving his business—assures the most vigorous pursuit of the injunctive remedy to halt the unlawful picketing.

This Court has determined that "both the successful charged party (in *Scofield*) and the successful charging party (in *Fafnir*) have a right to intervene in a Court of Appeals proceeding which reviews or enforces Labor Board orders." *United Auto Workers* v. *Scofield,* 382 U.S. at 208. This Court has not, however, determined the corollary and equally important extent to which charging parties may participate in proceedings instituted by the Board for temporary injunctive relief or may participate in subsequent appellate review in such proceedings. Accordingly, numerous and

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[5] See also this Court's recent sensitivity to the rights of private parties in administrative proceedings generally, as expressed in *Association of Data Processing Service Organizations, Inc.* v. *Camp,* 397 U.S. 150 and *Barlow* v. *Collins,* 397 U.S. 159.